IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2737 OF 2005

Smt.Radhika Prakash Borgaonkar : Petitioner
(Orig. Plaintiff)

V/s.

M/s.Nirman Developers & Ors. : Respondents
(Orig. Defendants)

...

Mr.A.S.Rao for the petitioner.

Mr.A.L.Kumar for the respondent no.1.

...

CORAM : S.A. BOBDE, J.

July 15, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Kumar, leaned counsel, appears and waives service of rule on behalf of the respondent no.1.

Heard by consent.

2. The petitioner, who is the plaintiff, has challenged the order dated 21.2.2005 directing her to value the suit as per the development agreement and pay Court fee accordingly.

3. Mr.Rao, the learned counsel for the petitioner, submitted that the plaintiff has sought for a declaration that the development agreement entered into between her husband and the respondent no.1 is void and capable of valuation under section 6(iv)(j). In the alternative, the learned counsel submitted that it ought to have been valued under section 6(iv)(ha). Obviously, the development agreement is not an agreement susceptible to monetary valuation as held by the Court below. Section 6(iv)(j) reads as follows:-

> "(j) **for other declarations**.
>
> In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act ad valorem fee payable, as if the amount or value of the subject-matter was one thousand rupees;
>
> In all suits under clauses (a) to (i) the plaintiff shall state the amount at which the values the relief sought, with the

reasons for the valuation;"

Admittedly, even according to the learned counsel for the petitioner, the agreement in question is an agreement for development and not for sale and, therefore, section 6(iv)(ha) is not available.

4. The last contention of the learned counsel is that the petitioner's husband, Prakash Borgaonkar, had only 1/3rd share and, therefore, the suit should be valued only in accordance with their share. This argument prima facie has no merit because the agreement sought to be set aside is an agreement for development of the entire property and not in relation to 1/3rd share. However, this issue is kept open for final determination and the trial Court may deal with it. The plaintiff undoubtedly has a right for refund in case it is found that the plaintiff has paid Court fee in excess.

5. The Petition is dismissed with the above observations. The rule stands discharged.

Sd/-

S.A. BOBDE, J.